

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MIYOKO'S KITCHEN,

Plaintiff,

v.

KAREN ROSS, in her official capacity as
Secretary of the California Department of Food
and Agriculture, and STEPHEN BEAM, in his
official capacity as Branch Chief of the Milk
and Dairy Food Safety Branch,

Defendants.

Case No. 20-cv-893

**DECLARATION OF MIYOKO
SCHINNER IN SUPPORT OF
MOTION FOR PRELIMINARY
INJUNCTION AND IN OPPOSITION
TO DEFENDANTS' MOTION TO
DISMISS**

I, Miyoko Schinner, declare as follows:

1. I am the founder and CEO of Miyoko's Kitchen and am offering this declaration to explain how the legal position taken by the California Department of Food and Agriculture has already harmed Miyoko's and will continue to cause harm to us going forward without a court order. In a letter that was specifically directed at Miyoko's, the Department informed us that our expression of our core mission is unlawful and ordered us to remove words, phrases, and images from our labels and website—including the phrase "100% cruelty and animal free," the use of the word "butter" in the phrase "cultured vegan butter," and an image of a "woman hugging a cow." As I explain in detail below, this is causing us harm in several distinct ways. It is causing us (and those who partner with or invest in us) to operate under a cloud—a constant fear of enforcement action, as a result of our truthful expression, that could lead to the impounding of our products, an overhaul of marketing strategies and package redesign that would cost untold dollars, and lower sales that could result due to creating consumer confusion about what our product are in nature, as well as what they stand for. While we ultimately decided not to refrain from this terminology because we have a First Amendment right to tell the truth, fear has been instilled in members of the team for the continued success of our company should regulations require us to change our overall strategy. Especially for a mission-driven company like ours, this situation is untenable.

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1 2. I have been a vegetarian for over 50 years and vegan for 35. I am a “serial
2 entrepreneur” who has been involved in the food industry for over 30 years, starting and running
3 enterprises focused on plant-based foods in an effort to create a new, more sustainable, more
4 compassionate food system that honors the rights of all living beings—human and non-human—to
5 life, liberty, and the pursuit of happiness. I believe that animals are not commodities to serve the
6 whims of humans, but have lives of their own that they wish to protect. I don’t see them as sources
7 of food or clothing, and I don’t believe that they are necessary in any way for humans to live—in
8 fact, our exploitation of them is a root cause of climate change and zoonotic diseases that may
9 eventually impact whether or not we humans continue to live at all. At this point in history, it is
10 critical that we embark on creating a new food system and economy that are not based on animal
11 agriculture if we want to ensure a planet that will continue to serve us.

12 3. In California alone, I can personally attest to the degradation of land and water in
13 the area in which I live (near Point Reyes National Seashore) caused by animal agriculture. I have
14 seen with my eyes the suffering that takes place on “family farms” and “humane farms” where just-
15 born baby calves are ripped apart from their mothers upon birth, thrown into a wheel barrow, and
16 taken away to be raised in a cold little hut by themselves (or a little manure-filled dirt patch with
17 the hood of a car as the only shelter, such as in the case of Angel, the rescued dairy cow, whose
18 image the CDFA has asked us to remove from our website); the swollen mammary glands of cows
19 with mastitis who go untreated because of their organic designation; the filthy conditions in which
20 they often live; the fear in the eyes of these intelligent, beautiful giants when the transport truck
21 comes to haul them away to go to slaughter. I also see the degradation to the land that cows, even
22 pastured, organic ones, cause, as well as the impact on water systems and resources.

23 4. After working with plant-based cheeses for a number of years, I published a
24 cookbook, *Artisan Vegan Cheese*, in 2012. The popularity of my cookbook made clear to me that
25 there was a desire for plant-based dairy products, and so I started Miyoko’s in 2014 with the dream
26 of bringing delicious, artisanal plant-based cheese and butter to the market. Our company
27 envisions a new tomorrow for dairy products coming from plants and other innovation, such as
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1 fermentation, so that consumers can have the same food experiences without harming the planet or
2 animals.

3 5. Miyoko's products include vegan cheeses, cultured vegan butter, and vegan cream
4 cheese. We use natural processes such as fermentation and aging to make these products,
5 combining traditional cheese-making cultures with plant-based foods like cashew nuts, oats, and
6 legumes. We have launched a new line of allergen-friendly nut-free cheeses made from a
7 combination of potatoes, beans, and seeds.

8 6. We prominently market our products as vegan and plant based. Our website and
9 other marketing materials highlight our mission is "Phenomenally Vegan," and they urge people to
10 adopt a plant-based diet. Our product labels similarly highlight that our products are "Vegan" and
11 "Made from Plants." It's important to make this clear to our customers, because many of them buy
12 our products specifically because they do not wish to eat animal-based dairy products. Whenever
13 we use the word "butter" or "cheese" on our packaging, there is always a qualifier, such as "vegan"
14 or "cashew."

15 7. From our humble beginnings in my home kitchen and with just four employees,
16 Miyoko's now sells our products in more than 12,000 stores throughout California and nationwide,
17 including major grocery chains like Safeway, Trader Joe's, and Whole Foods. Last year, our annual
18 sales increased by 168%. Our products are also widely distributed in Canada.

19 8. Although Miyoko's products have been extremely popular with customers, we don't
20 measure our success solely by revenue and profits. Like many other plant-based companies,
21 Miyoko's is in it for the mission: We believe that plant-based dairy products contribute to the
22 creation of a humane, healthy, and sustainable food supply. And plant-based eating can play a
23 major role in ending animal cruelty and reducing climate change caused by animal agriculture. I
24 have always believed that Miyoko's sells a lifestyle based on compassion—not just cheese. The
25 point isn't just to succeed for ourselves; it's to succeed for the planet, the animals, and for all of
26 humanity. Our planet and all of its inhabitants are threatened largely because of our agricultural
27 practices and exploitation of animals, and it is incumbent upon business leaders and industry to
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1 revolutionize our practices to create a future that supports sustainability and health and social
2 justice for all living beings.

3 9. To promote this same mission, my husband and I founded Rancho Compasión, a
4 501(c)(3) non-profit sanctuary for rescued farmed animals in Marin County. Rancho Compasión is
5 home to over 70 cows, donkeys, pigs, goats, sheep, ducks, and chickens, and we aim to educate
6 visitors and students to help them rethink how they view animals typically categorized as “food.” In
7 addition to rescuing and providing shelter, food, and veterinary care for animals, we conduct
8 humane education about our food system through school field trips and public visitation.

9 10. On December 9, 2019, our company received a letter from the California
10 Department of Food and Agriculture’s Milk and Dairy Food Safety Branch requiring Miyoko’s to
11 significantly revise our product labels and submit them to the agency for approval. The letter
12 demanded that we delete the word “butter” and phrases like “lactose free,” “hormone free,”
13 “cruelty free,” and “revolutionizing dairy with plants” from the label for our vegan butter. It also
14 said that we have to remove similar claims from our website, as well as pictures of a person
15 hugging a cow, which convey our company’s mission of compassion for animals. (This picture is
16 actually of a volunteer stroking the head of Angel, a rescued dairy cow. The purpose of this picture
17 was to show cows in a different light, not simply as magical milk machines on the planet to serve
18 humans, but as creatures that are capable of loving and being loved, just like dogs.) The letter also
19 mentioned a number of laws and regulations that it said our product labels violate.

20 11. I understand the State’s letter to threaten prosecution if Miyoko’s does not revise the
21 labels as set out by the letter. California’s Department of Food and Agriculture has the power to
22 revoke or suspend Miyoko’s license in California, impose hefty fines on Miyoko’s, and even order
23 criminal penalties. Given that Miyoko’s does a lot of business in California, I now fear that
24 Miyoko’s may be exposed to significant penalties, including impoundment of our products.

25 12. My understanding is that a next step after the letter we received would be for the
26 Department to seek impoundment of our products or impose hefty fines on the company. They
27 have also requested packaging for our cheese products as well.

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1 13. My understanding is that a number of other plant-based dairy producers have
2 received similar letters from the CDFA. While many of them simply complied, one of them went
3 through a lengthy process to petition the CDFA for the use of temporary standards of identity, and
4 was denied. As we have no intention of discontinuing the use of words such as “butter” and
5 “cheese,” preceded by unequivocal qualifiers, we felt the need to protect our First Amendment
6 rights.

7 14. In the wake of receiving the State’s letter, we have undertaken a thorough review of
8 all Miyoko’s products’ labels. We are concerned that the State’s enforcement position affects not
9 only the specific labeling identified in the letter, but all of our 100% plant-based products, and
10 therefore threatens our ability to convey our message across the board.

11 15. For each new label, we now have to ask ourselves: Is the State going to consider this
12 100% truthful message about our 100%-plant-based products illegal and order us to alter our
13 message? And, if so, is it worth the risk to us? Should we censor ourselves in advance? Or should
14 we continue to tell our customers the truth about our products? No business should have to make
15 that unfair choice.

16 16. The State’s letter also puts us in the situation where we either have to create
17 specialized labels and marketing for California, or we have to change all of our labels and
18 marketing nationwide. Making those changes to our marketing and packaging practices would
19 require enormous effort, and would likely cost an estimated \$2 million, starting from a deep dive
20 into how to rebrand, to the package design, to ordering the actual packaging for 27 SKUs, to all of
21 our marketing materials, also leading to the need to discard tens of thousands of dollars worth of
22 packaging, putting unnecessary burden on the environment and waste stream. It would also be
23 deeply disruptive to our small team, as we would have to shift our focus to new messaging and
24 nomenclature that could cause confusion among consumers. For example, in the beginning when I
25 first started the company, the California Department of Public Health (CDPH) told me I had to
26 take the word “cheese” off of my packaging and refer to it with a different statement of identity.
27 With the CDPH officer in my little plant, we agreed to call the products “cultured nut products.”
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1 This made it very difficult to sell, since no one new what that was. It was only when I started to call
 2 our products “vegan cheese” and “vegan butter” that the public finally understood.

3 17. Our customers, suppliers, partners, and investors have also raised concerns about
 4 the State’s position and whether it threatens our ability to carry out our core mission.

5 18. We live in a state that is supposed to be forward-thinking and supportive of
 6 innovation that can help combat climate change and the inhumane treatment of animals. Instead,
 7 we are now being penalized for our truthful speech and for being innovators trying to redefine the
 8 dairy category. I am deeply frightened that my business is imperiled and will be limited in its
 9 growth opportunities because I will have the added burden of finding terminology and imagery
 10 that communicates the purpose of our products without being able to truthfully express it or allude
 11 to it.

12 19. We believe in our core mission and we don’t want to change our message. We
 13 don’t think we should have to do that in order to exercise our First Amendment rights. At the same
 14 time, I can’t deny that the State’s position has caused us to fear prosecution, that it has had a
 15 chilling effect on our plans for future labeling and advertising, and that it has cast a cloud over us
 16 in a time of a national pandemic that is already making things difficult. We are hopeful that a quick
 17 resolution of this lawsuit will lift that cloud and allow us to go on truthfully telling the world about
 18 the benefits of 100% plant-based and 100% cruelty-free butter, cheeses, and spreads.

19 20. I have personal knowledge of the facts set forth in this declaration and could and
 20 would testify to those facts if called as a witness.

21 21. I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing
 22 is true and correct.

23
 24 Executed this 20th day of May, 2020

/s/ Miyoko Schinner

Miyoko Schinner

I hereby attest that I have on file a holographic signature
 corresponding to the signature indicated by the conformed
 signature (/S/) within this document.

/s/ Alene Anello

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